Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
	)	RM-9210

COMMENTS OF CORECOMM NEWCO, INC.

CoreComm Newco, Inc. ("CoreComm"), by its undersigned counsel, hereby submits the following comments in response to the October 5, 1998 Public Notice requesting comments in the above-captioned proceedings.[1] CoreComm limits its comments to the pricing flexibility issue generally and the pricing flexibility proposals that were filed by Bell Atlantic and Ameritech.[2]

CoreComm is authorized to provide local exchange telecommunications service in Ohio, and has been offering residential service in Ohio since March 11, 1998, through the resale of service obtained through an interconnection agreement with an Ameritech subsidiary. CoreComm and its affiliates also provide long distance telecommunications service in California, Colorado, Florida, Kentucky, Minnesota, Nevada, Ohio, Pennsylvania, Texas, and West Virginia. CoreComm and its

---

[1] *Commission Asks Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility*, Public Notice, FCC 98-256, released October 5, 1998.

[2] Letter from Kenneth Rust, Director, Federal Regulatory Affairs, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, April 27, 1998; Letter from Anthony M. Alessi, Director, Federal Relations, Ameritech, to Magalie Roman Salas, Secretary, Federal Communications Commission, June 5, 1998.

affiliates have local exchange certification applications pending in numerous other states, and expect to receive CLEC certification in a majority of states by the end of this year. CoreComm and its affiliates expect to provide service both through the resale of service provided by the relevant incumbent local exchange carriers ("LECs") and through the use of their own facilities in conjunction with the use of unbundled network elements provided by the incumbent LECs.

As a new entrant telecommunications carrier in a market that is dominated by the historically monopolist incumbent LECs, CoreComm has a particular interest in the present proceeding. CoreComm submits that in light of the nascent state of competition in the local telecommunications market, it would be premature for the Commission to consider establishing pricing flexibility for the incumbent LECs. In addition, before the Commission considers granting pricing flexibility to the incumbent LECs, the Commission must ensure that existing barriers to competition have been removed, and that sufficient protections and conditions have been established before regulatory relief is granted (as in the context of the long distance market). Moreover, many of the Commission's regulatory assumptions underpinning pricing flexibility were invalidated by the Eighth Circuit's decision in *Iowa Utilities Board*. Given the minimal level of competition in the local exchange market and the lack of any rational premises upon which to fashion pricing flexibility in the absence of market competition, the FCC should not prematurely consider pricing flexibility for the incumbent LECs. Finally, even if the Commission concludes that pricing flexibility is appropriate at this time, it should reject the Bell Atlantic and Ameritech pricing flexibility proposals, because these proposals are not premised upon the existence of adequate competitive safeguards as a prerequisite to the availability of pricing flexibility.

I. The Commission Should Not Consider Pricing Flexibility in the Absence of Meaningful Competition in the Local Exchange Market

CoreComm submits that, given the lack of genuine competition in the local telecommunications market, the Commission should not consider pricing flexibility for the incumbent LECs at this time. In addition, before the Commission considers granting pricing flexibility to the incumbent LECs, the Commission must ensure that existing barriers to competition have been removed, and that sufficient protections and conditions have been established (as was the case with the Commission's grant of pricing flexibility in the long distance market).

Moreover, many of the Commission's regulatory assumptions underlying pricing flexibility have been invalidated by the Eighth Circuit's decision in *Iowa Utilities Board*, which vacated the Commission's pricing guidelines for unbundled network elements ("UNEs") as well as its requirement that incumbent LECs provide combined UNEs. By way of background, the Commission's *Access Reform Order*[3] was predicated upon the assumption that the pricing guidelines and other determinations set forth in the Commission's *Local Competition Order*[4] would foster the development of competition in the provision of interstate access services. The *Access Reform Order* therefore was developed using a market-based approach to achieve access reform, whereby the

---

[3] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997)("*Access Reform Report and Order*").

[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. V. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom.* AT&T Corp. v. Iowa Utils. Bd., 118 S.Ct. 879 (1998).

(theoretical) development of competition would force access rates towards levels based on forward-looking economic costs.[5] These regulatory assumptions were, however, invalidated by the *Iowa Utilities Board* decision. With the predicate for its *Access Reform Order* having been removed, and in light of the minimal presence of competitive local exchange carriers in the local exchange market,[6] and the lack of any rational premises upon which to fashion pricing flexibility in the absence of market competition, the FCC should not consider pricing flexibility for the incumbent LECs at this time.

II. The Commission Should Reject the Bell Atlantic and Ameritech Pricing Flexibility Proposals

Even if the Commission determines to consider pricing flexibility at this time, it should reject the Bell Atlantic and Ameritech pricing flexibility proposals because they do not impose the existence of genuine competition as a prerequisite to the availability of pricing flexibility. Instead, the Bell Atlantic and Ameritech proposals would provide for the immediate adoption of sweeping pricing flexibility, despite the lack of meaningful competition in the local exchange telecommunications market. The Bell Atlantic and Ameritech pricing flexibility proposals would significantly depart from the Commission's conception of the basis for granting pricing flexibility. Moreover, as the

---

[5] *Access Reform Report and Order* at para. 264.

[6] Competitive local exchange carriers ("CLECs") accounted for only 5.1% of the business market for local telecommunications services in 1997. *United States Competitive Local Markets*, Strategis Group (1998). In 1996, only 1% of nationwide local service revenues, including local exchange and access services, was attributed to competitive access providers ("CAPs") and CLECs. Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data (rel. Nov. 1997).

Commission emphasized in its *First Report and Order* in the Access Charge Reform docket, "[d]eregulation before competition has established itself . . . can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers."[7] Accordingly, the Commission should reject these proposals.

A. The Bell Atlantic and Ameritech proposals would not be conditioned upon the existence of meaningful competition or the fulfillment of a competitive checklist.

In the *Access Reform NPRM*,[8] the Commission proposed to condition the initial stages of pricing flexibility upon compliance by the incumbent LECs with key market-opening requirements, so that barriers to competition would have been removed prior to the establishment of pricing flexibility.[9] By contrast, neither the Bell Atlantic nor the Ameritech proposal predicates pricing flexibility upon the removal of barriers to entry. For example, the first phase of pricing flexibility in these proposals is not premised on a careful determination of compliance with the key pro-competitive and market- opening provisions of the Act. Instead, initial pricing flexibility would be

---

[7] *Access Reform Report and Order* at para. 263.

[8] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 11 FCC Rcd 21354, para. 161 (1996)("*Access Reform NPRM*").

[9] These pre-conditions for competition do not, however, guarantee in and of themselves that meaningful competition actually exists. There should be widespread vigorous actual competition occurring in the marketplace before any pricing flexibility is granted. Moreover, it is evident that the Bell Operating Companies have not removed barriers to entry in that none of them has yet complied with the key competitive requirements of Section 271 of the Act in the estimation of the Commission. Thus, there is no basis for determining that removal of barriers to entry warrants granting such flexibility at this time, or that removal of barriers to entry without widespread competition would justify pricing flexibility.

based upon other criteria that have very little to do with establishing the preconditions of competition and/or the existence of a minimal level of competition.

Specifically, Ameritech apparently proposes that pricing flexibility for transport services be based only upon the existence of 100 DS1 connections somewhere in the state or LATA and that switched access pricing flexibility be based only upon the existence in a state of a negotiated interconnection agreement or a statement of generally available terms ("SGAT"). Bell Atlantic would impose the additional preconditions that interim number portability be available and 100 UNE loops be in service.

These proposals ignore the obligations of the incumbent LECs to take the key steps envisioned under the Act that would allow for the development of meaningful competition. In fact, other than number portability the proposals do not include any of the key obligations set forth in the Act as a means to set the stage for competition, such as the competitive checklist in Section 271. The existence of a single approved interconnection agreement or an SGAT in no way substitutes for an actual demonstration of compliance with key market-opening requirements.

Moreover, the degree of competition envisioned by Bell Atlantic and Ameritech as triggers for Phase I pricing flexibility is so small that it should not be given any regulatory significance. For example, the existence of 100 DS1 equivalent cross connects somewhere in the state is not a reasonable basis for assuming there is any significant degree of competition in a state or LATA. Similarly, the existence of SGATs or a negotiated agreement does not show that any competitive services are actually being provided, nor does the existence of 100 UNE loops in service somewhere in the state or LATA (under Bell Atlantic's proposal) demonstrate that a significant degree of

competition exists. Likewise, the proposed triggers for Phase II and Phase III pricing flexibility are not linked with the establishment of the preconditions of competition.

CoreComm submits that the approach to pricing flexibility reflected in the Bell Atlantic and Ameritech proposals would preserve the ability of the incumbent LECs to control the pace of competition without providing any safeguards to ensure the development of the fledgling local exchange market. If the Commission wishes to consider pricing flexibility, it should require the incumbent LECs to demonstrate full compliance with a meaningful competitive checklist. Moreover, as was the case in the context of the long distance market, the Commission should not consider pricing flexibility until a far greater degree of actual competition has developed.

B. The de-averaging proposed by Bell Atlantic and Ameritech is too broad.

Under the Bell Atlantic and Ameritech proposals, once the triggers are met anywhere in a LATA or state, the incumbent LECs would be granted Phase I pricing flexibility throughout the LATA or state. These triggers, such as 100 DS1 cross connects or 100 UNE loops, could be met in virtually one or a few central offices or a single office building, respectively. As a result, the Phase I geographic de-averaging apparently would permit incumbent LECs to de-average prices in all density zones throughout a state or LATA, even though there might be competition in only a tiny portion of the state. Similarly, these proposals would permit complete de-averaging of transport and switched access rates throughout a state or LATA even if virtually all competition is occurring in a very small area of the state. The Commission's pro-competitive goals would be severely de-railed if the Commission were to grant the sweeping relief sought on the basis of the very limited competition envisioned in Ameritech's and Bell Atlantic's proposals. The Commission should reject these proposals because there is no nexus between the relief sought and the areas in which the

proposed triggers for de-averaging would take place.[10] If there is no such nexus between the relief sought and the specific areas where the triggers for de-averaging occur, the incumbent LECs can simply raise rates in areas where there is limited (or no) competition to subsidize predatory pricing in areas where some nascent competition is developing.

C. The proposals to permit volume and term discounts are not justified in the absence of meaningful competition.

The Bell Atlantic and Ameritech proposals to permit volume and term discounts, competitive responses to RFPs, and contract tariffs are not justified in the absence of meaningful competition. Moreover, the very limited indicia of the advent of competition that would trigger each phase of pricing flexibility under the proposals would in no way justify the proposal to permit such discounted offerings. CoreComm submits that it would not be appropriate to permit the incumbent LECs to establish these discounted offerings throughout a state or LATA based on a showing of competition in a narrow area.

In addition, the carriers' proposals do not provide for necessary safeguards. For example, without such safeguards, the incumbent LECs could use discounts, RFPs, and contract tariffs to create head room under the price caps so that they could raise rates for customers that do not receive discounts. The proposals also do not address the extent to which these discounted offerings would be available to other customers. Moreover, the proposals do not establish any time limits for the discounted offerings. Absent time limits on the terms of these contracts, incumbent LECs could use

---

[10] While Bell Atlantic's proposal appears to have some limits on pricing flexibility for transport-based on wire centers, it is impossible to discern from Bell Atlantic's *ex parte* submission how this would be implemented.

such offerings to "lock-up" customers. Accordingly, the Commission should limit the time period of any discounts or contract tariffs.

Similarly, the proposals do not address the extent to which the LECs should be required to publish the terms and conditions of service they intend to propose in response to an RFP. This should be required by the Commission because it could significantly promote competition by permitting other carriers to offer customers a more desirable offering. The proposals also do not adequately justify growth discounts. Such discounts would primarily benefit BOC long distance affiliates who, once authorized under Section 271, could have significant growth. In addition, Ameritech and Bell Atlantic have not addressed the extent to which they should be required to publish the terms and conditions of service they intend to propose in response to an RFP. This should be required by the Commission because it could significantly promote competition by permitting other carriers to offer customers a more desirable offering.

In short, the Bell Atlantic and Ameritech proposals are not predicated upon the establishment of genuine competition as a prerequisite to pricing flexibility and are deficient in many areas. As a result, the proposals would allow the LECs to engage in anti-competitive behavior (such as price squeezes) that could seriously harm competitors. The proposals would not foster the growth of competition; rather, they would have the effect of stifling competition to the benefit of the LECs and to the detriment of consumers and prospective new entrant CLECs.

III. CONCLUSION

For these reasons, CoreComm requests that the Commission refrain from adopting pricing flexibility for the incumbent LECs at this time. CoreComm respectfully submits that the Commission

should instead take steps to establish a more complete implementation and enforcement of the key provisions of the 1996 Act that were designed to promote competition in the local exchange market.

Respectfully submitted,

Eric J. Branfman
Katherine A. Rolph
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Counsel for CoreComm Newco, Inc.

Dated: October 26, 1998

257016.2

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October 1998, copies of the foregoing Comments of CoreComm Newco, Inc. were served by hand delivery to the parties on the attached service list:

Eric J. Branfman

VIA HAND DELIVERY

Magalie Roman Salas, Esq. (original + 10)
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, DC 20554

VIA HAND DELIVERY

Jane Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

Richard Lerner
Deputy Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

Tamara Preiss
Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W. - Room 518
Washington, DC 20554

VIA HAND DELIVERY

ITS
1231 20th Street, N.W.
Washington, DC 20554

VIA HAND DELIVERY

Kathryn Brown
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 500
Washington, DC 20554